IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 228 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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HANSRAJ HARILAL SAINI - Appellant(s)
Versus
DAMYANTIBEN HANSRAJ SAINI - Defendant(s)

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Appearance :
MR NILESH A PANDYA for Appellant(s) : 1,MR ASHOK V PANDYA for Appellant(s) : 1,
MR DHIRENDRA MEHTA for Defendant(s) : 1,
MR ASHOK N PARMAR for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/07/2006

ORAL JUDGMENT

1. By way of this appeal the opponent husband has challenged the judgement dated 30.10.1996 passed by the Extra Assistant Judge, Banaskantha in Hindu Marriage Petition No. 13 of 1989 whereby the appellant was ordered to perform the conjugal rights.

2. Learned advocate for the appellant has submitted that learned Judge ought to have appreciated that the plaintiff is not lawfully wedded wife of the

appellant and therefore, no relief/s could be granted in her favour.

2.1 He further submitted that learned Judge has committed a grave error in holding that the plaintiff is entitled for the restitution of conjugal rights.

3. Heard learned advocate for the appellant. By passing impugned judgment the Trial Court directed the present appellant to extend all the benefits and rights of a Hindu wife to the present respondent as required under section 9 of the Hindu Marriage Act.

3. On perusal of the document (Exh. 46) i.e. Examination of the present opponent it appears that the opponent got married with the present appellant in presence of relatives of both the sides. It may also be noted that as a result of that marriage the present opponent gave birth to a girl child. In support of her case opponent has produced birth certificate of her girl child which is produced at Exh.(47). In the said certificate the name of the appellant has been shown as father of that girl

child. Hence, it clearly transpires that the appellant had married with the present opponent as per custom of Hindu religion. Therefore, opponent is entitled to get all the benefits and rights available to a married Hindu woman under Section 9 of the Hindu Marriage Act.

4. In above view of the matter I am of the view that the Trial Court has correctly appreciated the facts and law. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter. I am in complete agreement with the reasoning adopted and the findings arrived at by the Trial Court, and therefore, find no reason to interfere in this appeal. Hence, the appeal deserves to be dismissed.

5. In the result the appeal stands dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*